

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VFD CONSULTING, INC.,

Plaintiff,

v.

21st SERVICES; 21st HOLDINGS, LLC; PAUL
KIRKMAN; and DOES 1 through 5, inclusive.

Defendants.

No. C 04-2161 SBA

(Consolidated with Case No. 04-2162 SBA)

ORDER

[Docket Nos. 96, 148, 154]

On December 5, 2005, without seeking prior leave of Court, counsel for Plaintiff filed the Supplemental Declaration of Timothy Lord in Support of Opposition to Defendants' Motion for Summary Judgment or in the Alternative for Partial Summary Adjudication ("Supplemental Lord Declaration") [Docket No. 148].

On December 6, 2005, Defendants/Third Party Plaintiffs 21st Services, 21st Holdings, LLC and Paul Kirkman (collectively, "Defendants") filed a Miscellaneous Application in Support of Request for Leave to File Objection to Docket Item No. 148 (referred to herein as the "Motion for Leave to File an Objection" or the "Miscellaneous Application") [Docket No. 154]. Attached as Exhibit 1 to the Motion for Leave to File an Objection is Defendants' Objection to Docket Item No. 148.

Having considered Defendants' Motion for Leave to File an Objection, the Court finds that Defendants have demonstrated the existence of good cause warranting leave to file their Objection to Docket Item No. 148. The Court also finds it important to note that it is extremely troubled by Plaintiff's counsel's lack of regard for the Local Rules and this Court's standing orders, including the obligation that all parties meet and confer prior to filing any motions before the Court. Plaintiff's counsel's decision to file an untimely declaration, without providing any advance notice to Defendants or to this Court, is unprofessional and has resulted in a considerable waste of the Court's resources and time. Specifically, the parties' unwillingness to reasonably discuss or resolve this dispute on their own has necessitated further briefing that this Court must evaluate prior to rendering a decision on the Motion for Summary Judgment. Accordingly, Plaintiff's counsel is hereby admonished for failing to comply with the Local Rules and the Court's standing orders and is expressly

1 reminded that further failure to comply with *any* of the Court's orders will result in an order to show cause why
2 sanctions should not issue.

3 Further,


4 IT IS HEREBY ORDERED THAT Defendants' Miscellaneous Application in Support of Request for
5 Leave to File Objection to Docket Item No. 148 [Docket No. 154] is GRANTED. Defendants' Objection
6 to Docket Item No. 148, which is attached to the Miscellaneous Application as Exhibit 1, shall be deemed filed
7 as of the date of this Order.

8 IT IS FURTHER ORDERED THAT Plaintiff shall have until December 9, 2005 at 9:00 a.m. to file
9 an opposition to Defendants' Objection to Docket Item No. 148. The opposition shall not exceed three (3)
10 pages and shall be limited to the admissibility of Exhibit K and the specific issues raised in Defendants'
11 Objection pertaining to Exhibit K. Plaintiff shall not raise any new arguments concerning the Motion for
12 Summary Judgment. Plaintiff shall also file an application for filing Exhibit K under seal and a proposed order
13 that complies with the Local Rules by December 9, 2005 at 9:00 a.m. Upon receipt of Plaintiff's opposition
14 to Defendants' Objection to Docket Item No. 148, this matter will be taken under submission by the Court and
15 no further briefing may be filed without prior leave of Court.

16 IT IS FURTHER ORDERED THAT the hearing on Defendants' Motion for Summary Judgment or
17 in the Alternative for Partial Summary Adjudication ("Motion for Summary Judgment") [Docket No. 96] is
18 VACATED. The Court deems this matter fully submitted on the papers. If the Court later determines that a
19 hearing is necessary, the clerk will contact the parties and the matter will be placed on calendar for the first
20 available hearing date in January 2006.

21 IT IS SO ORDERED.

22
23 Dated: 12/7/05


SAUNDRA BROWN ARMSTRONG
United States District Judge